

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

|   |   |                     |
|---|---|---------------------|
| In the Matter of                            | ) |                     |
|   | ) |                     |
| Acceleration of Broadband Deployment        | ) | WC Docket No. 11-59 |
| Expanding the Reach and Reducing the Cost   | ) |                     |
| of Broadband Deployment by Improving        | ) |                     |
| Policies Regarding Public Rights of Way and | ) |                     |
| Wireless Facilities Siting                  | ) |                     |

**REPLY COMMENTS OF THE CITY OF MOUNTAIN VIEW, CALIFORNIA**

The City of Mountain View, California (the “City”) files these reply comments in the above-captioned proceeding. On page 17 of AT&T’s Comments, AT&T states:

Local jurisdictions are even opposing AT&T’s attempt to deploy Distributed Antenna Systems (“DAS”) that use much smaller antennas placed on existing utility poles. For example, Silicon Valley and at least two cities – Mountain View and Los Altos – have taken the position that AT&T cannot place antennas on a pole-top extension extending a few feet above existing utility poles. They contend that the antennas would violate the residential height restriction – even though there is no zoning height restriction for the public rights of way, and normal zoning requirements do not usually extend to public rights of way. In fact, if that were the case, all utility poles in residential areas would exceed the zoning height limitations. The City of Mountain View is taking the position that it must have a new ordinance just for DAS facilities before it can allow them, and it is demanding that AT&T must file a \$30,000 application fee just to file an application.<sup>1</sup>

The allegations are inaccurate. In fact, the City has promoted both wireline and wireless broadband deployment, and has leased space on its street light poles to other wireless providers, and has allowed other providers to construct facilities within the public right-of-way. The AT&T complaint merely serves as an illustration of the points made in comments filed by

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<sup>1</sup> *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of AT&T Inc. (July 18, 2011) (“AT&T’s Comments”).

national associations<sup>2</sup> urging the Commission to refrain from imposing federal regulation on local right-of-way and zoning processes: namely, there is no significant problem here.

## **I. THE CITY HAS FACILITATED, NOT DELAYED BROADBAND DEPLOYMENT**

The City of Mountain View, California (“City”) covers 12 square miles and is home to just under 74,000 residents. It is located 10 miles north of San Jose and 35 miles south of San Francisco. The City was an agricultural boomtown in the late 1800’s, and incorporated in 1902. With the growth of the electronic and aerospace industries in the decades after World War II, the City has seen itself transformed from an agricultural-focused town into a high-tech center located in the heart of the Silicon Valley. Mountain View is proud to have a solid small-business base as well as being home to many of the world’s most pioneering organizations in the field of high-tech, biotech, and telecommunications. Companies headquartered in Mountain View include Google, Symantec and Intuit. NASA Ames, one of the nation’s leading research laboratories, is also located in the City.<sup>3</sup>

With Google and other high tech companies located in the city, there is a high demand for superior broadband capabilities. The City simply could not maintain the presence of these companies if it acted as a barrier to broadband deployment. The City’s pro-broadband policies are reflected in the fact that there are numerous broadband providers in the city.

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<sup>2</sup> *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the International Municipal Lawyers Association, the National Association of Telecommunications Officers and Advisors, the Government Finance Officers Association, the American Public Works Association, and the International City/County Management Association (July 18, 2011) (“National Associations’ Comments”).

<sup>3</sup> For more information about the City, see <http://www.ci.mtnview.ca.us/>.

However, the City has also devoted significant effort to creating and maintaining residential and commercial areas that are aesthetically pleasing. These include, for example, downtown areas with open plazas that are intended to attract shoppers and diners, provide an attractive location for small businesses, and create an atmosphere which has proven attractive to many tech-savvy residents. It does little good to encourage broadband deployment if the effect is to drive away potential broadband users. So, while broadband deployment is important, it requires work, thought and a willingness (and ability) to adjust policies over time to achieve the proper balance between deployment and sound community development.

Since the early 1990s, the City has worked extensively with more than two dozen PUC-regulated and other wireline companies to issue permits and facilitate deployments of new and expansions of existing broadband and telecommunications networks. Over 27 miles of streets in Mountain View contain fiber optics conduits, including segments of larger, regional systems. Many streets contain multiple conduit systems, both as joint and discrete trenches.

On the wireless side, the City has received over 200 applications since 1984 for telecommunication facilities and currently has approximately 65 independent cell sites (many of which are co-location sites) within the City limits. A few applications were withdrawn but only two facilities have been denied. Both denials were due to aesthetic impacts. Interestingly, the City is now working with Verizon to consider alternatives to their proposed sites in order to ensure that service gaps can be closed while intrusion and harms to the community are minimized.

The City has not only facilitated the deployment of multiple private sector broadband networks to serve the demands of its residents and businesses, it is constantly looking for ways to improve its processes to accommodate new providers and new technologies. For example, the

City authorized Google to place wireless transmitters on City owned-streetlight poles through the City to create one of the first – and perhaps most successful – city-wide-no-cost WiFi networks in the country.

As another example, the City worked with AT&T to implement Project Lightspeed, a telecommunication system enhancement covering all residential areas of the City. This project involved the installation of 69 new above-ground cabinets, with each cabinet connected to a PG&E electrical power feed and to an existing AT&T cabinet. The City has many areas where utilities must be located underground, and where even electronics are placed in vaults to minimize impact wherever possible. The AT&T equipment required for Project Lightspeed was exceptionally large and intrusive, and presented significant issues not only for Mountain View, but for other cities as well. Due to very close coordination between the City and AT&T, both in design and also construction and location, and a well-established, consistently applied public notification process, the deployment proceed relatively smoothly, with minimal complaints by property owners or the general public. It is also noteworthy that the City provided continuity that kept the project on track with the same engineer and primary inspector assigned to the project during this entire period, while AT&T went through six different Lightspeed project managers in four years. The City spent significant effort reeducating AT&T staff so that the project could move forward smoothly.

## **II. AT&T’S ASSERTION THAT THE CITY OPPOSES DISTRIBUTED ANTENNA SYSTEM (“DAS”) DEPLOYMENTS ON UTILITY POLES IS INCORRECT**

AT&T’s comments about the City’s view of DAS deployments misstate the City’s view and misconstrue the City’s right of way policies and fees. As the City’s experience with Google Wi-Fi suggests, the City is very aware of the value of having strong, broadband capable wireless systems throughout the community. Cognizant of their needs, the City is in fact working hard to

facilitate wireless deployments, including DAS deployments, while maintaining the City's unique character and protecting the health and welfare of its citizens, and ensuring that work in the right of way is carefully managed to prevent disruption of activities and communications infrastructure that is critical for the country given its location in Silicon Valley.

Although AT&T contends that the City's zoning rules do not reach the rights of way, the City has consistently informed the company that it is misinterpreting the City's own ordinances. The City has applied its requirements (including height restrictions) to placement of antennae of the sort that AT&T seeks to install. Where a franchise has been issued by the state, a company must obtain an Encroachment Permit that sets out rules for use of the rights of way in Mountain View. The encroachment rules can and have been used to manage the permitted size of facilities. Where a company does not have a franchise from the state, it is required to obtain a franchise, license or other authorization from the City, the City makes the placement of facilities subject to the City's supervision.

Likewise, AT&T's contentions about utility poles are incorrect. The City does regulate the placement of poles. There are many areas of the City that are underground utility areas, maintained so at significant cost to the City. The problem that DAS systems faced was that, under the City Code as it existed at the time the City was first approached by a DAS provider (see discussion below), many DAS providers could not have placed the desired antennas on pole extensions in the right of way without showing that the proposed placements were the only alternative available. The City desired to make it easier for deployment of DAS facilities in the rights of way, and so embarked on a process of working with providers to develop a new model for placement of antennas in the rights of way. This is not as simple a task as AT&T suggests: while AT&T contends that it is merely seeking to extend the poles "a few feet", the extensions

(the City has been advised) could increase the height of poles by 50% or more, and substantially increase their girth and their impact through the addition of antenna arrays, large electrical meters attached to poles, and associated facilities. Some placements will raise safety issues, Americans with Disabilities Act (ADA) issues (because of the impact on sidewalks) and so on. The City is quite willing to accommodate DAS deployments – but that does not mean it should or can permit DAS installations in any place and under any conditions, regardless, of health, safety, disability and economic/aesthetic concerns.

What makes AT&T's accusations particularly troubling is that at the time that AT&T filed its comments, the City had been engaged in pre-application discussions with AT&T and another telecommunications provider, Extenet, both of whom had expressed an interest in deploying DAS systems on electric utility poles in parts of Mountain View, and the City staff was actively taking steps to accommodate the providers' needs while balancing the interests of the community. Thus, contrary to AT&T's assertion, the City has not opposed AT&T's attempt to place DAS antennas on utility poles. Rather, the City has devoted substantial time and resources to reviewing its processes to find ways to streamline the deployment process, while protecting against the significant, potential adverse effects. More specifically, the City's planning staff has actively engaged in discussions with both pre-applicants to gain an understanding of the technology, and to prepare the City Council for the adoption of ordinance amendments to more easily accommodate this new technology and service model. The City's planning staff worked cooperatively with both providers to work out a timeline and process for handling their deployment applications which the City expects to be completed this year. The City staff offered to process the applications as the ordinance amendment is being considered so

as to be in a position to move quickly once the ordinance amendments take effect. Alternatively, the companies remain free to pursue placement under the existing regime.

AT&T also wrongly claims the City is demanding that AT&T must pay a \$30,000 application fee just to file an application – as if it were intending to file for placement of a facility at a single location, as if every installation raised identical issues, and as if every location raised the same issues. In fact, AT&T plans to submit at least *twelve* applications. The City is entitled to charge a fee to recover its costs of reviewing applications, and has requested \$30,000 as a *deposit* towards the cost recovery fee. As it happens, the normal application fee would be \$3500 per antenna, which would suggest a fee of \$42,000 for AT&T's 12 antennae applications. However, the City asked for \$30,000 recognizing that it could likely achieve efficiencies in reviewing the applications. In any event, the City will refund any amounts in excess of its actual costs, and request additional amounts if costs exceed this estimate. Extenet was also asked to make a similar deposit and agreed to do so.

The City has used this deposit approach for larger projects for several years without issues. The reason for requiring meaningful up-front payments is clear: the City will invest money in reviewing an application, and it cannot be in a position where a provider simply drops applications and then refuses to pay for costs incurred. The City cannot do permitting on spec. AT&T is really complaining (a) that it should be treated differently and (b) the City should be required to bear the up-front costs of permitting.

### **III. THE CITY SUPPORTS THE NATIONAL LOCAL GOVERNMENT ASSOCIATIONS' COMMENTS OPPOSING FEDERAL REGULATION OF LOCAL RIGHTS OF WAY AND WIRELESS SITING**

AT&T's filing illustrates one reason why the City joins the National Associations in opposing federal action – if the misstatements made by AT&T about the City are representative of the “evidence” being offered by industry to support claims that local governments are a

“barrier” to broadband deployment, then there is simply no credible basis for federal action. It is noteworthy that the other DAS applicant, Extenet, and none of the high tech companies located in Mountain View have claimed the City’s policies are a “barrier” to broadband deployment. AT&T has not made its case.

Yet, even if communications industry filings do reveal *some* legitimate problems experienced by *some* providers in *some* locales, there still is absolutely no justification for federal action. There are already remedies available where problems do arise. The City’s efforts to accommodate new providers and new technologies are designed to meet *local needs and conditions* in the city, it would be inappropriate, unnecessary and potentially disruptive and dangerous for the Commission to substitute rules and models of the Commission’s own making for the ones successfully implemented by the City.

Moreover, the City is concerned that federal regulation in this area may hamper cities from experimenting with different models and approaches to spur broadband deployments. Giving localities broad flexibility to try new arrangements – and to abandon them if they do not work – may be critical to the development of successful deployment and adoption strategies. An inflexible federal rule will stifle local innovation.

Nor is mandatory federal regulation of these local matters what our federal system envisions. Thus, the City strongly supports the National Local Government Associations in their call for the Commission to defer in these local deployment matters to the experts – the local governments – and to focus Commission efforts on other areas more appropriate for national policy action such as broadband literacy, barriers to broadband adoption, and broadband deployment in rural areas, to name a few.

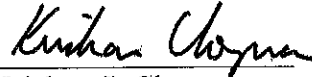


## CONCLUSION

The City urges the Commission to conclude that right-of-way and facility management processes and charges are not impeding broadband deployment. There is no evidence that the City's policies have prevented any company from providing broadband service in Mountain View. In fact, the City has welcomed and been very responsive to new technologies and new broadband deployments. There are many reasons to believe that federal regulations would prove costly and disruptive to our community, and stifle our efforts to develop innovative and flexible processes.

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Respectfully submitted,



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